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**From:** Richard Stauber

**Sent:** Friday, May 05, 2006 11:23 PM

**To:** Charter Commission

**Subject:** charter enforcement

Aloha Commssioners,

I would like to steer your attention to the part of our charter that is barely spoken of:

The enforcement of charter sections and the myth of self-enforcement.

Charter Section 7. 05L, [Powers, Duties, and Functions of the Mayor] reads: "L. Enforce the provisions of this charter, the ordinances of the county and all applicable laws".

What options does the public have if the Mayor to violates the charter? The public could complain at the Council, or file with the Board of Ethics.

In the attachment an example, where these parties show no interest to pursue.

The violation took place in Charter Section 19.14. This Section 19.14 reads: "Section 19.14. Surplus and Reserves. Any unappropriated surplus and any unencumbered balances of any appropriations in any fund at the end of any fiscal year shall be available for appropriation for the succeeding fiscal year. The mayor shall certify to the council the amount of any unappropriated surplus or unencumbered balances by January 1 following the close of the fiscal year. (Amended 1992)"

In the attached public record [C2006-118] The Mayor did not certify the surplus, neither was it done by January 1 as required by the charter.

The Communication C 2006-118 was quietly received at the April 12, 2006 Council Meeting. No questions asked by any Council Member.

I humbly ask the Commission to create a new charter section that could address the enforcement of the charter sections with a particular subsection that would allow the reimbursement of reasonable attorney fees for the member of the public. A possible condition for 'cost recovery' could be the suit has to be successful in the 5<sup>th</sup> Circuit Court. A language similar to HRS 91-12 (c) seems to be sufficient:

"(c) Any person may commence a suit in the circuit court of the circuit in which a prohibited act occurs for the purpose of requiring compliance with or preventing violations of this part or to determine the applicability of this part to discussions or decisions of the public body. The court may order payment of reasonable attorney fees and costs to the prevailing party in a suit brought under this section."  
"Award of attorneys' fees under subsection (c) intended to apply where citizen prevails against government; prevailing defendant private party thus not entitled to attorneys' fees under this subsection. 86 H. 132, 948 P.2d 122. "

It is my believe that the Administration, Bureaucracy and Legislature are able to comply to the charter, but only with the help of the Judiciary.

Thank you for your time and consideration.